

(2008) 10 BOM CK 0061

In the Bombay High Court

Case No : Writ Petition No. 6689 of 2008

Chembur Service Station

APPELLANT

Vs

Bharat Petroleum Corporation Ltd.

RESPONDENT

Date of Decision : 01-10-2008

Acts Referred:

Maharashtra Rent Control Act, 1999 — Section 29

Citation : (2009) 1 BomCR 811 : (2008) 110 BOMLR 3441 : (2009) 1 MhLj 641

Hon'ble Judges : Anoop V. Mohta, J

Bench : Single Bench

Advocate : C.J. Sawant, instructed by Jawahar J. Thakkar, for the Appellant;
M.D. Siodia and Raina Bhagatwala, instructed by Rustomji and Ginwala, for the Respondent

Judgement

Anoop V. Mohta, J.—Heard finally by consent. The Petitioner has challenged the impugned order whereby, after considering the rival contentions of the parties, the Appellate Small Causes Court partly modified the order passed by the court below pending the framing of preliminary issue regarding jurisdiction of the Court to try the Suit. The Operative part of order dated 26/08/2008 is as under:

ORDER

Appeal No. 401 of 2008 is hereby partly allowed and interim order in notice of motion at Exhibit 8 in R.A.D. Suit No. 913 of 2008, hereby set aside to the extent that Defendant shall continue to supply petrol and petroleum products in the suit premises to the Plaintiff until framing of preliminary issue regarding jurisdiction and giving judgment thereon.

Appeal No. 401 of 2008 on rest of the counts partly stands dismissed.

2. The basic order passed by the Trial Court dated 13/05/2008 is as under:

ORDER

1. The defendant is directed to maintain status quo as of today i. the plaintiff

shall remain in possession of the suit premises and defendant shall continue to supply petrol and petroleum products to the petrol pump in the suit premises until framing of preliminary issue regarding jurisdiction to entertain and try the present suit and giving judgment thereon.

2. It is made clear that defendant and its officers and servants and agents are entitled to inspect the petrol pump and equipments thereat for purpose of checking smooth working of the same.

3. Admittedly, there is an agreement of Dealership, between the parties dated 01/12/1995, called "Agreement for Dispensing Pump and Selling Licence", and also an agreement called "Service Station /Depot Site Lease". The 1995 Agreement is in force till this date. Admittedly, the Bharat Petroleum Corporation Limited-the Respondent has issued show cause notice to the Plaintiff- Petitioner before terminating the said dealership on various alleged breaches of terms and conditions of 1995 agreement.

4. The Plaintiff-Petitioner, immediately after the receipt of the said Show Cause Notice, has filed the present Suit in the Small Causes Court. The Suit is under Maharashtra Rent Control Act (for short, "The Mah. Rent Act").

5. The learned Sr. counsel appearing for the Petitioner has strongly relied on Section 29 of the Mah. Rent Act. The relevant extract is as follows.:" 29. Landlords not to cut-off or withhold essential supply or service.

1) No landlord, either himself or through any person acting or purporting to act on his behalf, shall, without just or sufficient cause, cut-off or withhold any essential supply or service enjoyed by the premises tenant in respect of let to him. the

2) ...

3) ...

4) ...

5) ...

6) An be application made under this section jointly by all or any of may the tenants of the premises situated in the same building.

Explanation.- In this section,

a) essential supply or service includes supply of water, electricity, lights in passages and on stair-cases, lifts and conservancy or sanitary service;

b) withholding any essential supply or service shall include acts or omissions attributable to the landlord on account of which the essential supply or service is cut-off by the municipal authority or any other competent authority.

7) Without prejudice to the provisions of Sub-sections (1) to (6) or any other law

for the time being in force, where the tenant,

a) who has been in enjoyment of any essential supply or service and the landlord has withheld the same, or

b) who desires to have, at his own cost, any other essential supply or service for the premises in his occupation, the tenant may apply to the Municipal or any other authority authorised in this behalf, for the permission or for supply of the essential service and it shall be lawful for that authority to grant permission for, supply of such essential supply or service applied for without insisting on production of a "No Objection Certificate" from the landlord by such tenant.

5. Based upon the above, it is contended that the supply of petrol, pursuant to the said Dealership Agreement, is an essential supply or service as contemplated u/s 29 of the Mah. Rent Act and therefore, the order passed by the Trial Court need to be retained.

6. I am not inclined to accept this submission on firstly that the Petitioner is claiming landlord and tenant relationship based upon the agreements and, claiming protection under the Mah. Rent Act.

Therefore, whether that relationship is in existence or not that issue itself needs detailed scrutiny and enquiry. Unless it is decided, at this stage, to pass such mandatory order by the Small Causes Court, by taking wrong note of this provision of Section 29 of the Mah. Rent Act, is not correct. This explanation need to be read in the context of landlord and tenant relationship and the essential supply or service need to be read with amenities, as required to be enjoyed while occupying the premises. That includes the uninterrupted supply of petrol pursuant to this agreement, in my view, is unacceptable. Any dispute and or cause of action pursuant to the breach of terms and conditions and of such Dealership Agreement cannot be gone into by the Court under M.Rent Act. The remedy is else where. The mandatory order as passed and as rightly observed is beyond the preview of Section 29 of the Mah. Rent Act.

7. Taking all this into account, I see there is no reason to interfere with the reasoned & correct order passed by the lower Appellate Court as recorded above.

8. However, without observing anything in the matter, it is necessary that the Court should frame the Preliminary issue as expeditiously as possible and decide the same within a reasonable time. The Petition is accordingly disposed of.